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O'Hanlon, John M.

Employer and employee

Albany, N.Y.

[1923?]

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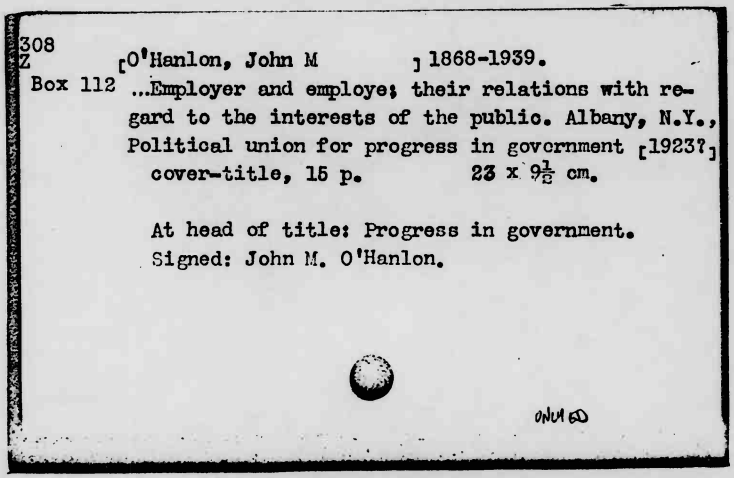
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Progress in Government

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Employer and Employe

Their Relations with Regard to the Interests of the General Public

Published by the
POLITICAL UNION
for Progress in Government
86 State Street
Albany, N. Y.

POLITICAL UNION
FOR PROGRESS IN GOVERNMENT

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M.W.L. July 13, '23

THE POLITICAL UNION for Progress in Government represents the cooperation of citizens of various political affiliations for the benefit of the State of New York.

Men and women of all shades of political faith take active part in the POLITICAL UNION and still retain their regularity as members of the various national political parties.

The citizen who takes no interest in the problems of his neighbor, does not need the POLITICAL UNION.

The citizen who thinks that everything is all right and going to be all right, is not needed in the POLITICAL UNION.

Among the problems to be discussed by the membership of the POLITICAL UNION are:

AGRICULTURE —The problem of feeding the multitude, with fair returns to the farmer and fair prices to the housewife;

INDUSTRY —The problem of the relations of employer and employe, with regard to the interests of the general public;

CONSERVATION —The problem of realizing upon the State's natural resources, an asset now largely wasted;

TAXATION — The problem of obtaining a dollar's value for every dollar exacted in taxation;

GOVERNMENT —The problem of government, its officials, bureaus, commissions, departments and their value to the public.

The POLITICAL UNION will offer suggestions for progress in government, a system of checks and balances, required by the State's greatly increased population and wealth; so that the changes, errors, abuses and inequalities of government may be corrected, and the ideals and intelligence of its citizens find expression.

POLITICAL UNION
for Progress in Government

Employer and Employe

Their Relations with Regard to the Interests of the General Public

Presented by an Eminent Official of Organized Labor

A state-wide conference of Organized Labor was held April 14, 1921, at the City Hall in Albany, assembled at the call of the New York State Federation of Labor. Every industrial community of the State was represented by a specially chosen delegate.

This conference was called to enter a protest to the Legislature against pending legislation that would mutilate the Labor Laws and prohibit the right of wage earners to strike.

Wage earners of the State had been thoroughly aroused to the dangers confronting industry by the hurried enactment and signing of the bill reorganizing the State Labor Department. The act reduced its powers of enforcement of the Labor Laws and the Workmen's Compensation Law by unrestricted dismissal of competent and experienced officials on the basis of a fifty per cent cut in the annual appropriation. This emasculating feature was coupled to a provision annulling the Civil Service Laws as far as the State Labor Department was concerned.

Contemplating this proposed wreck of a State Department devoted exclusively to the enforcement of the laws secured by the wage earners of the State by hard struggling during a half of a century, and the program of hostile legislation advocated by those who had demonstrated their power to control the Legislature, this conference took action.

Return Control of Government to the People

After fully canvassing the situation from every angle and adopting plans to immediately combat the designs of the Labor Law destroyers, the conference declared one of the desirable objects to be achieved by the people was the return to them of control of the making and administration of law. This demand

was set forth in the following resolution of purpose adopted by unanimous vote of the conference:

> "To agitate and educate and organize for the return to the people of the power to make their own laws and of control over their administrative and judicial officials by amending the State Constitution to permit making of law by the initiative and referendum and the recall by popular vote of elected officials."

In making this declaration, the conferees had before them the testimony of their own eyes and ears in witnessing the travesty of law making then going on in the Senate and Assembly which were to adjourn sine die that week.

Corporation Lobbyists as Law Makers

They saw corporation lobbyists occupying seats in both chambers counseling members of the Legislature, while bills were being passed under the gavel at the rate of one a minute with roll calls of members thereon being accomplished by the calling of two or three names selected at random by the clerk. Labor representatives interrogated Senators and Assemblymen as to what such and such a bill meant that was thus being made into Statute Law and were frequently informed by the legislator addressed that he did not know. He did not even know how he was recorded on the bill. They gazed at mountains of printed bills the contents of which were unknown to most legislators. They heard reports on bills from the Committee on Rules, composed of seven Assemblymen, which arbitrarily decided what measures should be enacted and which should be killed, all contained in a jumble of numbers and phrases unexplanatory of the contents of the bills.

Iron Rule of Rules Committee

Once in a while an earnest and active legislator would demand that the Rules Committee give some attention to the "petition" he had filed with it asking for a favorable report on a bill desired by his constituents or that it at least be reported without recommendation so it could be debated and voted on. Such a request would be treated as if the member were irrational. If he forced his demand and

moved to discharge the committee from his bill every member hopefully interested in a bill still in the possession of the Rules Committee would form a solid block of negative votes and crush the motion.

"The Machine" Grinding Out Laws

Bills, the exact meaning of which could not be known even to the student member because of last minute amendments made by line number and not printed in the bill, were hustled through under emergency messages from the Governor to overcome the constitutional provision that no bill shall be enacted unless it had been in final printed form on desks of members for at least three days. Many of such bills are not printed until after the Legislature adjourns.

With this spectacle of "delegated law making," dominated by a few legislators in powerful positions gained by influences not controlled by the voters, impressing its lesson, the wage earners conference came speedily and unitedly to the only remedy, the one proposed in the declaration adopted for the initiative, referendum and recall.

Real Popular Government's Weapons

Under such a direct system of law making and unmaking of law, the State can be assured that no law will be enacted against the will of the people or at least remain on the statute books unless permitted by the people. To initiate a law it must first be constructed and secure the approval of a percentage of the voters; then it will be submitted to the white light of intensive debate and discussion from every angle, in public prints and in meetings; some time later the people at a general election will vote direct on such proposals, and to become law they must have a majority of the votes. This will be a much better system than discussing candidates for the Legislature who may be controlled in their voting by interests which would not dare to be heard or seen in a popular referendum.

Old System Modified and Modernized

Public emergencies will be cared for by permitting a certain class of laws to be enacted by elected legislators as at present, and become

effective pending the decision of the people at the polls; otherwise the work of the legislative body will be confined to framing proposed laws and holding real public hearings on them, the final enactment or veto to be with the voters. It can be readily discerned that under such a system, privilege-seeking and foolish proposed laws will fall out of the reckoning, and attention will be concentrated on genuine additions to the code of civilization. As the wage-earners of this State have never advocated a bill that they would not willingly submit to a vote of the whole people, they believe no other proposals should be made into law that cannot be submitted to such a test. And that is the only class of proposed law that is doomed by direct legislation. It should be doomed.

Check-rein Upon Law Administrators

As administration of law by courts and administrators is in most instances the very core of the law, the people should have the right to pass upon all administrators and judges they elect. Length of term (a method employed to remove officials from the judgment of voters) should not annul this right. Therefore the right of the electors to recall their elected public officers at any time on a properly initiated recall election for just cause is incontestable as an act of popular sovereignty.

Freemen's Right

The conference adopted also the following plank:

> "Defeat of any proposal to compel Labor Unions to incorporate and of any proposal to limit right of wage earners to strike."

This legislative demand of the Organized Wage Workers of New York State expresses their unalterable purpose to retain the one fundamental right which distinguishes freemen from slaves; the right to quit work individually or collectively without accounting to any person or power on the earth. It should not be necessary in this advanced century to make such a declaration, and it would not be made now if it were not for the fact that those who would barter away human freedom for the temporary privilege of making easy

profits have made deliberate attempts in the New York State Legislature to establish industrial slavery by law during the sessions of 1921 and 1922. They threaten to renew the effort in the 1923 session. The scheme to resurrect involuntary industrial servitude is being engineered by the same detestable combination of predatory wealth that has crippled the State Labor Department, mutilated the Labor Laws, and sought to break up labor unions by forced unemployment and the individual contract of employment in socalled "open" shops which binds the worker signing it to the surrender of every natural and acquired right he may have.

England's Old Slave Law

It is the same idea that can be found in the Statute of Laborers originated as a part of the Penal Code of England in 1348 and which in one form or another was continued until 1875, when the Cross act was passed in which for the first time in English legal history the wage worker was called a "workman" instead of a "servant" and the employer called an "employer" instead of a "master." As the Prime Minister of Great Britain said in a public address after the passage of the Cross act, "For the first time employer and employed are equal under British law." This act repealed the last vestiges of the compulsory work laws for British adult workers and established the right of contractual relations between employers and employees. The worker was transferred from the Penal to the Civil Code. It was the end of more than 500 years of continued effort to force the industrial workers of England to accept slavery as their condition. The English worker had never ceased to rebel from the day he was first placed in the Penal Code.

Workmen Taken Out of Penal Code

In 1548, two hundred years after the original enactment, he was still so troublesome a rebel against the power that assumed to sentence him to work at court-made wages and hours that the exasperated "masters" made an amendment to the Penal Statute of Laborers which the very mention of still reddens in shame the cheeks of patriotic Englishmen. That amendment provided that if a

worker quit work without permission of the "master" for the second time the penalty for the offence should be that the worker should be branded with the letter "S" and become the chattel slave of the "master" to do with body and soul as he liked, *and this penalty applied to women and children* as well as men. Three years later that awful essay at human degradation had to be repealed because it had increased rebellion among the workers, who, if they had not rebelled, would have been worthy of the fate the industrial tyrants had decreed for them.

Going Back to Odious System

As the rebellion of generation after generation of workers grew in potency the Penal Statute of Laborers diminished in terrors until in 1875 the Cross act acknowledged that it was only being honored in the breach. Yet it is into this infamous sink of human oppression that the "Open Shop" and "American Plan" haters of industrial justice and human rights have dipped for their inspiration in coining legislation to make it a crime for an American worker to quit work. This is the sinister background of the Brady bill of 1921 and the Duell-Miller bill of 1922, of which it should not be forgotten that the introducers in the 1922 instance were chairmen of the Labor and Industry committees of the Senate and Assembly and in the 1921 instance the introducer was chairman of the same Assembly committee, legislative personages who are specially representative of the administration and whose introduced bills relating to labor and industry are accepted by every one as administration measures. These bills followed the principle of the "Statute of Laborers." The Duell-Miller bill erected a part of our State Supreme Court to be designated by the Governor as a Court of Industrial Relations with power to fix wages and hours of employment and sentence workers to the conditions thus prescribed. Refusal to continue at work on the part of two or more workers constituted an offence punishable as contempt of court, of course without trial by jury.

Striking Made a Crime

Striking was made a crime, and the court was given authority to take over any involved

labor union and its funds and dissolve it as in receivership of a defunct corporation or to conduct it and revise its laws as the court pleased. To gild this decoction it was also provided that the employer could not discharge any employee while the court had jurisdiction over a so-called dispute; but there was and can be created no power compelling an employer to continue business, and the authors of the bill knew it.

A Lop-sided Law

A similar law in Kansas and in Colorado has in operation been demonstrated to apply only to workers, and orders to employers to continue business and continue workers in their employment at "statu quo" conditions have been contemptuously ignored by employers and the so-called Industrial Courts in those states have never made any attempt to enforce such an order. Such legislation is designed solely to make slaves out of workers, and is expressive of the philosophy of those who believe there are two kinds of people in America: one small and powerful group with the divine right to rule and a great mass whose duty it is to obey these rulers. The New York State Federation of Labor was called into existence in 1864 when a bill had been progressed in the State Legislature of that year making it a crime for two or more workers to combine for the purpose of bargaining with their employers as to hours, wages and other conditions of employment. This notorious measure was known as "The Folger-Hastings Anti-Trades Union Bill" and had been introduced by Senator F. H. Hastings of Rensselaer county and its terms further amplified and thus reported to the Senate from the Judiciary Committee by its chairman, Senator Charles J. Folger of Ontario county. While prohibiting wage earners from forming unions and making all participants in a strike criminals, this bill by the Folger amendment permitted employers to combine and fix wages and hours for their workers and to maintain blacklists. It expressed honestly what the industrial tyrants desired done; it had none of the camouflage of the Duell-Miller revival of 1922. The trades unions of the State sent representatives to Albany, nearly all of whom were veterans of the Civil War for human liberty then drawing to a

successful close, and they made such a mighty protest that the 1864 industrial servitude bill was halted in its tracks and killed.

Origin of Organized Labor

The first State organization of labor was formed as a result of this experience, and from that hour to this it has been engaged in wiping off the statute books so-called "master and servant" laws modeled on the infamous English Statute of Laborers and replacing them with American Labor Laws. When Senator Folger offered himself as a Republican candidate for Governor some years after he had tried to put the American worker into the Penal Code the same workers rallied and helped to elect his opponent Governor. They did not forget then, and they will not forget now. Eternal vigilance is the price of liberty.

What Compulsory Incorporation Means

Not content in their campaign to put the workers into the Penal Code, the union labor haters are threatening to also stand them on their head in the Civil Code by the stratagem of compulsory incorporation. Incorporation by any group of citizens under the Code as it exists is solely for the purpose of limiting the personal and collective liability under the law of those so incorporating. The would-be labor union destroyers propose that unions shall be incorporated whether they want to or not solely for the purpose of increasing the personal and collective liability of the members to the end that not only the collective funds and property of the union but the personal property and savings of every member shall be at the mercy of every "shark" employer and his agents. The foolish or intemperate act of any member or affiliated union which can be seized upon as a basis of action for damages is to involve every other affiliated union and its members. That such acts can take place periodically is assured by the presence of paid spies in the membership of such unions, planted there for the very purpose of inciting such collective action or of doing the act individually that will involve the others. Clarence Darrow, the eminent Chicago lawyer, in an opinion has declared that such incorporation can mean the destruction of unions by the single method of being compelled to waste all their funds in defense proceedings in courts against instigated suits for damages.

A Recent Decision

As this is being written the decision of the U. S. Supreme Court in the Coronado case as rendered by Chief Justice Taft is just being published. This decision, after declaring that the United Mine Workers of America is not shown to be responsible for the alleged acts of a local union and therefore its funds of $3,000,000 which had been attached under the suit for damages under the Sherman Anti-Trust Law must be released, goes on to give an opinion of what could happen to a union if the lawyers on the other side had only presented a case just a little bit different. This "opinion" says that a union and its funds and the property of members can be sued against and seized by a judgment debtor if the lawyers engaged by the predatory employing corporation succeed in showing that a strike affects a commodity made for sale in another State as in that event it could be successfully argued that the strike was causing "restraint of interstate commerce" and any damages suffered by the makers of the commodity because of the strike could be collected three-fold from the union and its members ordering the strike regardless of the causes underlying the strike. Or, in other words, the Court advised the lawyers for the Coronado Fuel and Iron Co. and others seeking prosecution of labor unions under the Anti-Monopoly Law just how it could be done regardless of the Clayton amendment to that Federal law which exempts labor unions and wage-earners from its provisions on the theory "that the labor of a human being is not a commodity or article of commerce." Any employer engaged in interstate commerce whose employees refuse starvation wages, long hours or slavish conditions and go on strike can certainly show he has lost profits by the resulting strike, and he can therefore sue each employee separately and collectively and any fund of any organization, labor or otherwise, which has been contributed to by them for the purpose of caring for themselves in case of unemployment, and can at the outset attach all these organization funds, individual property and savings and deprive the owners of them of any access to them until it has been determined how much the employer has lost in profits by the strike and he has recouped himself to the extent of three times that amount from the attached moneys and property. As soon as that outstanding lawyer of the East,

Samuel Untermyer, read the Taft decision he announced in the New York papers that the only salvation of unions and their members from financial destruction was by immediately incorporating voluntarily so as to limit the liability of unions and their members. By thus taking advantage of the present voluntary incorporation laws, he declares, the union and its members will only be responsible for their own acts and not for the acts of others. This friendly advice from a man whose considered legal opinion commands thousands of dollars when sought by clients, exposes with startling clearness the great central fact in the Taft decision: that what is being sought to be accomplished by compulsory incorporation of wage earners in the States has been accomplished in the field of Federal jurisprudence by this decision. The remedy to be sought, as announced by the American Federation of Labor, is the enactment of a Federal Law overturning this preliminary decision and stating with emphatic simplicity the limits of the Federal Judiciary in interpreting the Federal anti-trust law, which was never designed to do as the Court has decided.

It is the Danbury Hatters case decision renewed, under which the savings and homes of the Danbury Hatters were taken away from them to pay three-fold damages. The Clayton amendment was passed to make such another decision impossible and former Federal Attorney-General Wickersham, who prosecuted the Danbury Hatters case for the Government, said when the Clayton amendment was adopted that if such an amendment had been in the law at the time of the Danbury Hatters strike and lockout no case against the Danbury Hatters could have been made in any Federal court.

Attitude of Organized Labor

As compulsory State incorporation of labor organizations is the proposal of those who would destroy such organizations and the incorporation is to be built around the scheme of authorizing labor unions to be sued as such so as to reach their funds and the private property of their members through instigated damage suits, organized labor of this State will oppose any legislation creating such form of incorporation as a part of the plan to subjugate wage workers. As to voluntary incor-

poration, to meet the menaces set up by the recent decision in the Coronado case or any other like developments, that is a matter to be determined by the international unions and their local unions. Undoubtedly any such action, if taken, will be after consultation with legal counsel. The purpose of the organized wage earners of the Empire State to preserve inviolate the untrammeled right to quit work collectively or individually will govern their attitude towards all subterfuges to hamper or annul that right. Organized wage earners have no more love for strikes and lockouts than any other group of the citizenship. They would avoid them by any honorable means. In fact, more strikes are avoided and lockouts prevented by labor unions than have ever been originated by them. But a strike with all of its hardships is far more to be preferred than the alternative of a court edict commanding workers to go to work or a form of compulsory incorporation that would penalize workers for having the manhood to rebel against industrial conditions that make for degradation and poverty. The wage worker of America will hold fast to the principles enunciated by the great Emancipator, the foe of slavery in any form, President Abraham Lincoln, who said during the Civil War:

> "I am glad that a system of Labor prevails under which laborers can strike when they want to; where they are not obliged to work under all circumstances, and are not tied down to work whether you pay them for it or not. I like a system which lets a man 'quit' when he wants to, and I wish it might prevail everywhere. I want a man to have a chance to better his condition; that is the true system. I am not ashamed to confess that twenty-five years ago I was a hired laborer."

That other great American, Thomas Jefferson, revolutionist and third President of this glorious Republic, was also a hater of slavery and tyranny in any form. On his private seal, with which he attested every document he signed, was engraved: "Rebellion against tyrants is obedience to God." Abraham Lincoln made the supreme sacrifice in defense of that principle and preserved for all time the Union and Freedom Jefferson suffered to establish on this hemisphere. The wage

earners of modern America will follow where they led and render enlightened obedience to God as the highest service to man.

JOHN M. O'HANLON,
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